Supreme Court, U.S.
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No. 99-5

In The

Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

vs.

ANTONIO J. MORRISON, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF OF THE STATES OF ARIZONA, ARKANSAS, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, GEORGIA, IDAHO, ILLINOIS, KANSAS, KENTUCKY, MAINE, MARYLAND, MINNESOTA, MISSOURI, MONTANA, NEVADA, NEW MEXICO, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OKLAHOMA, OREGON, RHODE ISLAND, TENNESSEE, UTAH, VERMONT, WASHINGTON, WEST VIRGINIA, AND WISCONSIN, AND THE COMMONWEALTHS OF MASSACHUSETTS AND PUERTO RICO, AND THE TERRITORY OF GUAM, AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTRODUCTION

The thirty-one amici States, the Commonwealth of Puerto Rico, and the Territory of Guam urge this Court to grant the petition because the court of appeals' decision invalidates legislation that the States believe is a critical component in alleviating the national problem caused by violence against women. The petition requests review of the court of appeals' decision to strike down 42 U.S.C. § 13981, the civil rights provision of the Violence Against Women Act of 1994, as exceeding Congress's authority to regulate interstate commerce. Because the amici agree with Congress that gender-based violence substantially affects interstate commerce and the States cannot address this problem adequately by themselves, the amici urge the Court to review the Fourth Circuit's ruling that section 13981 exceeds Congress's commerce power.

INTEREST OF THE AMICI STATES

The state Attorneys General overwhelmingly supported the enactment of the Violence Against Women Act, including the creation of a specific federal civil rights remedy for the victims of gender-based crimes, because the existing system for dealing with violence against women was inadequate. *See Crimes of Violence Motivated by Gender Hearing: Before the Subcomm. on Civil and Constitutional Rights of House Comm. on the Judiciary*, 103d Cong., 1st Sess. 34-36 (1993) (letter from 41 Attorneys General from 38 States, the District of Columbia, and two territories). Each of the amici is acutely aware that violence against women continues to be a widespread problem

that requires the remedies that are now provided by the Violence Against Women Act. The amici are interested in protecting victims of gender-based violence in their States and believe that those victims are entitled to the benefits of the private remedies provided in section 13981.

REASONS FOR GRANTING THE PETITION

As the petition by the United States compellingly explains, this Court should review the federal question raised both because the court of appeals exercised the "grave power of annulling an Act of Congress," *United States v. Gainey*, 380 U.S. 63, 65 (1965), and because "it placed unwarranted limits on Congress's authority to address a national problem of the first magnitude." Petition at 17. The amici wish to amplify several concerns that make this case especially appropriate for review.

First, the Attorneys General for the amici well understand the adverse effects caused by the widespread incidence of violence against women. While the victims suffer the most severe and immediate effects of domestic violence, there are also harmful consequences for state institutions – state and local governments, law enforcement agencies, courts, schools, college campuses, and various public health and human service agencies. Domestic violence adversely affects interstate commerce through its impact in homes, the workplace, and the broader community. The Attorneys General for each of the amici also recognize that domestic violence is a pervasive and deeply entrenched problem within our society.

The Violence Against Women Act, including section 13981, is a necessary and proper means to address this problem.

Second, the Court should clarify whether Congress's commerce power extends to the regulation of non-economic activity when Congress makes specific findings, supported by an extensive legislative record, that the activity has a significant effect on interstate commerce. Relying on *United States v. Lopez*, 514 U.S. 549 (1995), the Fourth Circuit concluded that "[b]ecause Section 13981 neither regulates an economic activity nor includes a jurisdictional element," it cannot be upheld as a permissible exercise of Congress's commerce power. Pet. App. at 31a. However, the majority's decision conflicts with fourteen district court rulings that have found section 13981 within Congress's power under the Commerce Clause. *See* Petition at 18 n.8. By reviewing this case, the Court could clarify the scope of Congress's commerce clause powers to address the problem of violence against women and also thereby provide guidance for Congress and the States in their future efforts to resolve national problems cooperatively.

Third, the principles of federalism do not require invalidation of section 13981 because (1) the connection between gender-motivated violence and interstate commerce is direct and expressly established by the Violence Against Women Act's legislative record and (2) section 13981 does not interfere with state and local governmental efforts to address the problem of gender-motivated violence. The Court therefore does not encounter the same federalism concerns in this case as those it noted

in *Lopez*. *See* 514 U.S. at 561 n.3 (noting that the legislation displaced state policy choices).

CONCLUSION

The Court should grant the petition for writ of certiorari.

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